

covers actual Losses under the Contract and Imminent Breach payments under § 115.34(a) or § 115.69. The indemnity agreement must be secured by such collateral as the Surety or SBA finds appropriate. Indemnity agreements from other Persons, secured or unsecured, may also be required by the Surety or SBA.

(2) *Prohibitions.* No indemnity agreement may be obtained from the Surety, its agent or any other representative of the Surety. The Surety must not separately collateralize the portion of its bond which is not guaranteed by SBA.

(b) *Salvage and recovery*—(1) *General.* The Surety must pursue all possible sources of salvage and recovery. Salvage and recovery includes all payments made in settlement of the Surety's claim, even though the Surety has incurred other losses as a result of that Principal which are not reimbursable by SBA.

(2) *SBA's share.* SBA is entitled to its guaranteed percentage of all salvage and recovery from a defaulted Principal, its guarantors and indemnitors, and any other party, received by the Surety in connection with the guaranteed bond or any other bond issued by the Surety on behalf of the Principal unless such recovery is unquestionably identifiable as related solely to the non-guaranteed bond. The Surety must reimburse or credit SBA (in the same proportion as SBA's share of Loss) within 90 days of receipt of any recovery by the Surety.

(3) *Multiple Sureties.* In any dispute between two or more Sureties concerning recovery under SBA guaranteed bonds, the dispute must first be brought to the attention of OSG for an attempt at mediation and settlement.

**§ 115.18 Refusal to issue further guarantees; suspension and termination of PSB status.**

(a) *Improper surety bond guarantee practices*—(1) *Imprudent practices.* SBA may refuse to issue further guarantees to a Prior Approval Surety or may suspend the preferred status of a PSB Surety, by written notice stating all reasons for such decision and the effective date. Reasons for such a decision include, but are not limited to, a determination that the Surety (in its under-

writing, its efforts to minimize Loss, its claims or recovery practices, or its documentation related to SBA guaranteed bonds) has failed to adhere to prudent standards or practices, including any standards or practices required by SBA, as compared to those of other Sureties participating in the same SBA Surety Bond Guarantee Program to a comparable degree.

(2) *Regulatory violations, fraud.* Acts of wrongdoing such as fraud, material misrepresentation, breach of the Prior Approval or PSB Agreement, or regulatory violations (as defined in §§ 115.19(d) and 115.19(h)) also constitute sufficient grounds for refusal to issue further guarantees, or in the case of a PSB Surety, termination of preferred status.

(3) *Audit; records.* The failure of a Surety to consent to SBA's audit or to maintain and produce records constitutes grounds for SBA to refuse to issue further guarantees for a Prior Approval Surety, to suspend a PSB Surety from participation, and to refuse to honor claims submitted by a Prior Approval or PSB Surety until the Surety consents to the audit.

(4) *Excessive Losses.* If a Surety experiences excessive Losses on SBA guaranteed bonds relative to those of other Sureties participating in the same SBA Surety Bond Guarantee Program to a comparable degree, SBA may also require the renegotiation of the guarantee percentage and/or SBA's charge to the Surety for bonds executed thereafter.

(b) *Lack of business integrity.* A Surety's participation in the Surety Bond Guarantee Programs may be denied, suspended, or terminated upon the occurrence of any event in paragraphs (b) (1) through (5) of this section involving any of the following Persons: The Surety or any of its officers, directors, partners, or other individuals holding at least 20% of the Surety's voting securities, and any agents, underwriters, or any individual empowered to act on behalf of any of the preceding Persons.

(1) If a State or other authority has revoked, canceled, or suspended the license required of such Person to engage in the surety business, the right of such Person to participate in the SBA Surety Bond Guarantee Program

## Small Business Administration

## § 115.19

may be denied, terminated, or suspended, as applicable, in that jurisdiction or in other jurisdictions. Ineligibility or suspension from the Surety Bond Guarantee Programs is for at least the duration of the license suspension.

(2) If such Person has been indicted or otherwise formally charged with a misdemeanor or felony bearing on such Person's fitness to participate in the Surety Bond Guarantee Programs, the participation of such Person may be suspended pending disposition of the charge. Upon conviction, participation may be denied or terminated.

(3) If a final civil judgment is entered holding that such Person has committed a breach of trust or violation of a law or regulation protecting the integrity of business transactions or relationships, participation may be denied or terminated.

(4) If such Person has made a material misrepresentation or willfully false statement in the presentation of oral or written information to SBA in connection with an application for a surety bond guarantee or the presentation of a claim, or committed a material breach of the Prior Approval or PSB Agreement or a material violation of the regulations (all as described in § 115.19), participation may be denied or terminated.

(5) If such Person is debarred, suspended, voluntarily excluded from, or declared ineligible for participation in Federal programs, participation may be denied or terminated.

(c) *Notification requirement.* The Prior Approval or PSB Surety must promptly notify SBA of the occurrence of any event in paragraphs (b) (1) through (5) of this section, or if any of the Persons described in paragraph (b) of this section does not, or ceases to, qualify as a Surety. SBA may require submission of a Statement of Personal History (SBA Form 912) from any of these Persons.

(d) *SBA proceedings.* Decisions to suspend, terminate, deny participation in, or deny reinstatement in the Surety Bond Guarantee program are made by the D/SG. A Surety may file a petition for review of suspensions and terminations with the SBA Office of Hearings and Appeals (OHA) under part 134 of this chapter. SBA's Administrator

may, pending a decision pursuant to part 134 of this chapter, suspend the participation of any Surety for any of the causes listed in paragraphs (b) (1) through (5) of this section.

(e) *Effect on guarantee.* A guarantee issued by SBA before a suspension or termination under this section remains in effect, subject to SBA's right to deny liability under the guarantee.

### § 115.19 Denial of liability.

In addition to equitable and legal defenses and remedies under contract law, the Act and the regulations in this part, SBA is not liable under a Prior Approval or PSB Agreement if any of the circumstances in paragraphs (a) through (h) of this section exist.

(a) *Excess Contract or bond amount.* The total Contract amount at the time of Execution of the bond exceeds \$2,000,000 in face value (see § 115.12(e)), or the bond amount at any time exceeds the total Contract amount.

(b) *Misrepresentation or fraud.* The Surety obtained the Prior Approval or PSB Agreement, or applied for reimbursement for losses, by fraud or material misrepresentation. Material misrepresentation includes (but is not limited to) both the making of an untrue statement of material fact and the omission of a statement of material fact necessary to make a statement not misleading in light of the circumstances in which it was made. Material misrepresentation also includes the adoption by the Surety of a material misstatement made by others which the Surety knew or under generally accepted underwriting standards should have known to be false or misleading. The Surety's failure to disclose its ownership (or the ownership by any owner of at least 20% of the Surety's equity) of an interest in a Principal or an Obligor is considered the omission of a statement of material fact.

(c) *Material breach.* The Surety has committed a material breach of one or more terms or conditions of its Prior Approval or PSB Agreement. A material breach is considered to have occurred if:

(1) Such breach (or such breaches in the aggregate) causes an increase in